
Introduced by Senator Cedillo

February 13, 2003

An act to amend Sections 17039, 19340, and 19341 of, and to add Section 17052.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 224, as introduced, Cedillo. Income taxes: credit: earned income.

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law.

This bill, under that law, would allow a refundable credit in an amount equal to 15% of the earned income credit allowed by federal law, minus the amount of alternative minimum tax, as provided. This bill would provide that refunds payable in connection with claiming the credit are available only if funds are appropriated for that purpose by the Legislature.

This bill would also make various conforming changes to provisions relating to interest payable on refunds and overpayments of tax.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17039 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17039. (a) Notwithstanding any provision in this part to the
- 4 contrary, for the purposes of computing tax credits, the term "net



1 tax” means the tax imposed under either Section 17041 or 17048
2 plus the tax imposed under Section 17504 (relating to lump-sum
3 distributions) less the credits allowed by Section 17054 (relating
4 to personal exemption credits) and any amount imposed under
5 paragraph (1) of subdivision (d) and paragraph (1) of subdivision
6 (e) of Section 17560. Notwithstanding the preceding sentence, the
7 “net tax” ~~shall~~ may not be less than the tax imposed under Section
8 17504 (relating to the separate tax on lump-sum distributions), if
9 any. Credits ~~shall be~~ are allowed against “net tax” in the following
10 order:

11 (1) Credits that do not contain carryover or refundable
12 provisions, except those described in paragraphs (4) and (5).

13 (2) Credits that contain carryover provisions but do not contain
14 refundable provisions, except for those that are allowed to reduce
15 “net tax” below the tentative minimum tax, as defined by Section
16 17062.

17 (3) Credits that contain both carryover and refundable
18 provisions.

19 (4) The minimum tax credit allowed by Section 17063 (relating
20 to the alternative minimum tax).

21 (5) Credits that are allowed to reduce “net tax” below the
22 tentative minimum tax, as defined by Section 17062.

23 (6) Credits for taxes paid to other states allowed by Chapter 12
24 (commencing with Section 18001).

25 (7) Credits that contain refundable provisions but do not
26 contain carryover provisions.

27 The order within each paragraph shall be determined by the
28 Franchise Tax Board.

29 (b) Notwithstanding the provisions of Sections 17061 (relating
30 to refunds pursuant to the Unemployment Insurance Code) and
31 19002 (relating to tax withholding), the credits provided in those
32 sections ~~shall be~~ are allowed in the order provided in paragraph (6)
33 of subdivision (a).

34 (c) (1) Notwithstanding any other provision of this part, no tax
35 credit ~~shall~~ may reduce the tax imposed under Section 17041 or
36 17048 plus the tax imposed under Section 17504 (relating to the
37 separate tax on lump-sum distributions) below the tentative
38 minimum tax, as defined by Section 17062, except the following
39 credits:

- 1 (A) The credit allowed by Section ~~17052.2 (relating to teacher~~
2 ~~retention tax credit)~~ 17052.1 (relating to earned income tax
3 credit).
- 4 (B) The credit allowed by former Section 17052.4 (relating to
5 solar energy).
- 6 (C) The credit allowed by former Section 17052.5 (relating to
7 solar energy, repealed on January 1, 1987).
- 8 (D) The credit allowed by former Section 17052.5 (relating to
9 solar energy, repealed on December 1, 1994).
- 10 (E) The credit allowed by Section 17052.12 (relating to
11 research expenses).
- 12 (F) The credit allowed by former Section 17052.13 (relating to
13 sales and use tax credit).
- 14 (G) The credit allowed by former Section 17052.15 (relating to
15 Los Angeles Revitalization Zone sales tax credit).
- 16 (H) The credit allowed by Section 17052.25 (relating to the
17 adoption costs credit).
- 18 (I) The credit allowed by Section 17053.5 (relating to the
19 renter's credit).
- 20 (J) The credit allowed by former Section 17053.8 (relating to
21 enterprise zone hiring credit).
- 22 (K) The credit allowed by former Section 17053.10 (relating to
23 Los Angeles Revitalization Zone hiring credit).
- 24 (L) The credit allowed by former Section 17053.11 (relating to
25 program area hiring credit).
- 26 (M) For each taxable year beginning on or after January 1,
27 1994, the credit allowed by former Section 17053.17 (relating to
28 Los Angeles Revitalization Zone hiring credit).
- 29 (N) The credit allowed by Section 17053.33 (relating to
30 targeted tax area sales or use tax credit).
- 31 (O) The credit allowed by Section 17053.34 (relating to
32 targeted tax area hiring credit).
- 33 (P) The credit allowed by Section 17053.49 (relating to
34 qualified property).
- 35 (Q) The credit allowed by Section 17053.70 (relating to
36 enterprise zone sales or use tax credit).
- 37 (R) The credit allowed by Section 17053.74 (relating to
38 enterprise zone hiring credit).
- 39 (S) The credit allowed by Section 17054 (relating to credits for
40 personal exemption).

1 (T) The credit allowed by Section 17054.5 (relating to the
2 credits for a qualified joint custody head of household and a
3 qualified taxpayer with a dependent parent).

4 (U) The credit allowed by Section 17054.7 (relating to the
5 credit for a senior head of household).

6 (V) The credit allowed by former Section 17057 (relating to
7 clinical testing expenses).

8 (W) The credit allowed by Section 17058 (relating to
9 low-income housing).

10 (X) The credit allowed by Section 17061 (relating to refunds
11 pursuant to the Unemployment Insurance Code).

12 (Y) Credits for taxes paid to other states allowed by Chapter 12
13 (commencing with Section 18001).

14 (Z) The credit allowed by Section 19002 (relating to tax
15 withholding).

16 (2) Any credit that is partially or totally denied under paragraph
17 (1) ~~shall be~~ is allowed to be carried over and applied to the net tax
18 in succeeding taxable years, if the provisions relating to that credit
19 include a provision to allow a carryover when that credit exceeds
20 the net tax.

21 (d) Unless otherwise provided, any remaining carryover of a
22 credit allowed by a section that has been repealed or made
23 inoperative shall continue to be allowed to be carried over under
24 the provisions of that section as it read immediately prior to being
25 repealed or becoming inoperative.

26 (e) (1) Unless otherwise provided, if two or more taxpayers
27 (other than husband and wife) share in costs that would be eligible
28 for a tax credit allowed under this part, each taxpayer ~~shall be~~ is
29 eligible to receive the tax credit in proportion to his or her
30 respective share of the costs paid or incurred.

31 (2) In the case of a partnership, the credit ~~shall be~~ is allocated
32 among the partners pursuant to a written partnership agreement in
33 accordance with Section 704 of the Internal Revenue Code,
34 relating to partner's distributive share.

35 (3) In the case of a husband and wife who file separate returns,
36 the credit may be taken by either or equally divided between them.

37 (f) Unless otherwise provided, in the case of a partnership, any
38 credit allowed by this part ~~shall be~~ is computed at the partnership
39 level, and any limitation on the expenses qualifying for the credit

1 or limitation upon the amount of the credit ~~shall be~~ is applied to the
2 partnership and to each partner.

3 (g) (1) With respect to any taxpayer that directly or indirectly
4 owns an interest in a business entity that is disregarded for tax
5 purposes pursuant to Section 23038 and any regulations
6 thereunder, the amount of any credit or credit carryforward
7 allowable for any taxable year attributable to the disregarded
8 business entity ~~shall be~~ is limited in accordance with paragraphs
9 (2) and (3).

10 (2) The amount of any credit otherwise allowed under this part,
11 including any credit carryover from prior years, that may be
12 applied to reduce the taxpayer's "net tax," as defined in
13 subdivision (a), for the taxable year ~~shall be~~ is limited to an amount
14 equal to the excess of the taxpayer's regular tax (as defined in
15 Section 17062), determined by including income attributable to
16 the disregarded business entity that generated the credit or credit
17 carryover, over the taxpayer's regular tax (as defined in Section
18 17062), determined by excluding the income attributable to that
19 disregarded business entity. No credit ~~shall be~~ is allowed if the
20 taxpayer's regular tax (as defined in Section 17062), determined
21 by including the income attributable to the disregarded business
22 entity, is less than the taxpayer's regular tax (as defined in Section
23 17062), determined by excluding the income attributable to the
24 disregarded business entity.

25 (3) If the amount of a credit allowed pursuant to the section
26 establishing the credit exceeds the amount allowable under this
27 subdivision in any taxable year, the excess amount may be carried
28 over to subsequent taxable years pursuant to subdivisions (c) and
29 (d).

30 (h) (1) Unless otherwise specifically provided, in the case of
31 a taxpayer that is a partner or shareholder of an eligible
32 pass-through entity described in paragraph (2), any credit passed
33 through to the taxpayer in the taxpayer's first taxable year
34 beginning on or after the date the credit is no longer operative may
35 be claimed by the taxpayer in that taxable year, notwithstanding
36 the repeal of the statute authorizing the credit prior to the close of
37 that taxable year.

38 (2) For purposes of this subdivision, "eligible pass-through
39 entity" means any partnership or S corporation that files its return
40 on a fiscal year basis pursuant to Section 18566, and that is entitled

1 to a credit pursuant to this part for the taxable year that begins
2 during the last year the credit is operative.

3 (3) This subdivision shall apply to credits that become
4 inoperative on or after the operative date of the act adding this
5 subdivision.

6 SEC. 2. Section 17052.1 is added to the Revenue and Taxation
7 Code, to read:

8 17052.1. (a) For each taxable year beginning on or after
9 January 1, 2003, there is allowed as a credit against the “net tax”
10 (as defined by Section 17039) an amount determined under
11 subdivision (b).

12 (b) Except as otherwise provided in this section, the amount of
13 the credit allowed under subdivision (a) is computed by
14 multiplying the “federal credit amount” (as defined in subdivision
15 (c)) by 15 percent and subtracting therefrom the amount of tax
16 imposed by Section 17062 (relating to alternative minimum tax),
17 if any, for the same taxable year.

18 (c) The term “federal credit amount” means the amount
19 determined for purposes of federal income tax under Section 32 of
20 the Internal Revenue Code prior to the application of subdivision
21 (h) of Section 32, relating to reduction of credit to taxpayers
22 subject to alternative minimum tax.

23 (d) No credit is allowed under this section to any person who
24 is married (within the meaning of Section 17021.5) and files a
25 separate return for the taxable year.

26 (e) Section 3507 of the Internal Revenue Code, relating to
27 advance payment of earned income credit, does not apply.

28 (f) For purposes of this section, any reference to Section 32 of
29 the Internal Revenue Code means the Internal Revenue Code as
30 amended by Public Law 106-107.

31 (g) If the amount allowable as a credit under this section
32 exceeds the tax liability computed under this part, the excess shall
33 be credited against other amounts due, if any, and the balance, if
34 any, refunded to the taxpayer upon funds being appropriated for
35 that purpose by the Legislature.

36 (h) Notwithstanding any other provision of state law, and to the
37 extent permitted by federal law, amounts refunded pursuant to
38 subdivision (g) are treated the same as the federal credit defined
39 in subdivision (c) for the purpose of determining eligibility to
40 receive benefits under Division 9 (commencing with Section



1 10000) of the Welfare and Institutions Code or amounts of those
2 benefits.

3 (i) The Franchise Tax Board shall provide training and
4 information to employers so that employees claiming the credit
5 allowed by this section are allowed to adjust their withholding
6 allowances to reflect the credit.

7 SEC. 3. Section 19340 of the Revenue and Taxation Code is
8 amended to read:

9 19340. Interest shall be allowed and paid on any overpayment
10 in respect of any tax, at the adjusted annual rate established
11 pursuant to Section 19521 as follows:

12 (a) In the case of a credit, from the date of the overpayment to
13 the due date of the amount for which the credit is allowed. Any
14 interest allowed on any credit shall first be credited on any
15 amounts due from the taxpayer under Part 10 (commencing with
16 Section 17001), this part, or Part 11 (commencing with Section
17 23001).

18 (b) In the case of a refund, including a refund in excess of tax
19 liability as prescribed in subdivision (g) of Section 17052.1 or
20 subdivision (j) of Section 17053.5, from the date of the
21 overpayment to a date preceding the date of the refund warrant by
22 not more than 30 days, the date to be determined by the Franchise
23 Tax Board.

24 SEC. 4. Section 19341 of the Revenue and Taxation Code is
25 amended to read:

26 19341. (a) Except as provided in subdivisions (b), (c), and
27 (d), if any overpayment of tax is refunded or credited within 90
28 days after the return is filed, or within 90 days after the last day
29 prescribed for filing the return of tax (determined without regard
30 to any extension of time for filing the return), whichever is later,
31 no interest ~~shall be~~ is allowed under Section 19340 on the
32 overpayment.

33 For the purposes of this section, “overpayment of tax” includes
34 a refund in excess of tax liability as prescribed in subdivision (g)
35 of Section 17052.1 or subdivision (j) of Section 17053.5.

36 (b) In the case of returns ~~which~~ that set forth no determination
37 or amount of tax liability, or credits other than that allowed under
38 Section 17053.5, and ~~which~~ that are filed solely for the purpose of
39 claiming the renter credit, no interest ~~shall be~~ is allowed on refunds
40 made within 90 days from the date on which the return is filed, or

1 within 90 days after the last day prescribed for filing the return,
2 whichever is later. This subdivision applies only when
3 communication with the claimant or other verification is necessary
4 to determine entitlement to the claimed credit.

5 (c) In the case of an individual or fiduciary taxable under Part
6 10 (commencing with Section 17001), for the 1982 taxable year
7 and each taxable year thereafter, the 90-day time periods specified
8 in subdivision (a) shall be 45 days.

9 (d) In the case of a return of tax ~~which~~ *that* is filed after the last
10 date prescribed for filing the return (determined with regard to
11 extensions), no interest ~~shall~~ *may* be allowed or paid for any day
12 before the date on which the return is filed.

13 SEC. 5. This act provides for a tax levy within the meaning of
14 Article IV of the Constitution and shall go into immediate effect.

